

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN ROBERT DEMOS, JR.,

Plaintiff,

v.

THOMAS O. RICE, et al.,

Defendants.

CASE NO. C20-824 RSM

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter is before the Court on a Report and Recommendation (“R&R”) of the Honorable Brian A. Tsuchida, Chief United States Magistrate Judge. Dkt. #2. Plaintiff previously filed an application to proceed *in forma pauperis* and a proposed § 1983 prisoner civil rights complaint. Dkt. #1. Judge Tsuchida reviewed the filings and recommended that this Court deny the application and dismiss the action because Plaintiff cannot proceed *in forma pauperis*. Dkt. #2. Specifically, the R&R notes that Plaintiff “has had more than three prior actions dismissed as frivolous, malicious, or for failure to state a claim, [and] may not proceed *in forma pauperis* unless he alleges that he is in ‘imminent danger of serious physical injury.’” Dkt. #2 at 2 (quoting 28 U.S.C. § 1915(g)). The R&R further notes that the allegations of Plaintiff’s proposed complaint lack detail such that they do not constitute “a plausible allegation that [he]

1 faced imminent danger of serious physical injury at the time of filing.” Dkt. #2 at 2 (quoting
2 *Andrews v. Cervantes*, 493 F.3d 1047 (9th Cir. 2007) (internal citations omitted)).

3 Plaintiff has not objected to the R&R and has instead filed a “Notice of Appeal.” Dkt.
4 #3. Plaintiff did so despite the R&R specifically indicating that it was “not an appealable order”
5 and that Plaintiff should not seek review until a judgment was entered. Dkt. #2 at 2.
6 Nevertheless, Plaintiff filed an appeal that is docketed and pending before the Ninth Circuit Court
7 of Appeals. Dkt. #4.

8 Upon docketing of an appeal, the district court no longer has jurisdiction over the matter.
9 *See* FED. R. APP. P. 42; *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)
10 (“[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction
11 on the court of appeals and divests the district court of its control”); FED. R. CIV. P. 62.1.
12 However, Plaintiff’s notice of appeal contains substantive argument that the Court would
13 otherwise construe as objections. To the extent the Ninth Circuit Court of Appeals determines
14 that this Court is without jurisdiction to enter this Order, the Court requests that the Ninth Circuit
15 Court of Appeals remands the matter for the limited purpose of entry of this Order and judgment
16 in conformance therewith.

17 Plaintiff objects to the R&R on the basis that he, as a native American, is not a person
18 subject to 28 U.S.C. § 1915(g). Dkt. #3. Plaintiff, relies on a wide range of unrelated statutes,
19 treaties—both domestic and international—, and cases to create a nonsensical argument that
20 individual native Americans sovereigns and not “persons.” *Id.* at 2–3. Plaintiff notes that
21 § 1915(g) applies to “prisoners” and not “persons,” but does nothing to establish that he is not a
22 “prisoner” subject to § 1915(g). As his sole allegation of imminent danger, Plaintiff notes that
23 “the President of the U.S., Donald J. Trump, is telling people to ingest/drink Lysol disinfectant
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1 to combat COVID-19.” *Id.* at 3. Plaintiff appears to understand the clear danger of following
2 this terrible advice and does not allege that he will be forced to ingest Lysol.

3 Accordingly, and having considered the Report and Recommendation, Plaintiff’s Notice
4 of Appeal, and the remainder of the record, the Court finds and ORDERS:

- 5 1. The Court ADOPTS the Report and Recommendation (Dkt. #2).
- 6 2. Plaintiff’s application to proceed *in forma pauperis* (Dkt. #1) is DENIED.
- 7 3. This matter is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(g) and
8 standing bar orders, *see In re John Robert Demos*, MC91-269-CRD (W.D. Wash. Jan.
9 16, 1992); *In re Complaints and Petitions Submitted by John Robert Demos*, (W.D. Wash.
10 Dec. 15, 1982)
- 11 4. This matter is CLOSED.
- 12 5. The Clerk is directed to send copies of this Order to Plaintiff, to Judge Tsuchida, and to
13 the Ninth Circuit Court of Appeals (re: Case No. 20-35541).

14 Dated this 13th day of July, 2020.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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